APPEAL NO. 93482

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1993). On March 25, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) reached maximum medical improvement (MMI) on November 13, 1992, with 0% impairment. Claimant asserts that the decision is against the great weight and preponderance of the evidence and emphasizes that the designated doctor, (Dr.C), did not properly use the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, (Guides) third edition, second printing, dated February, 1989, in doing his evaluation.

DECISION

We affirm.

At the hearing all parties agreed that the issue was whether MMI had been reached and, if so, on what date.

Article 8308-6.42(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested." The claimant asserts that the decision is against the great weight of the evidence and that the designated doctor's evaluation did not comply with the Guides.

The Appeals Panel determines:

That the decision that claimant reached MMI on November 13, 1992, with a zero percent impairment is not against the great weight and preponderance of the evidence.

That the designated doctor's degree of compliance with the Guides in the circumstances of this case does not control the decision.

Claimant was employed by (employer) on February 26, 1991, when he injured his back lifting a case of corn. He saw (Dr. S), his family doctor, on either the same or the next day. Dr. S diagnosed back strain with spasm and indicated claimant could return to work in six days. Claimant's treating doctor, Dr. P first saw claimant on March 12, 1991. He found claimant to have pain and limited motion but to be neurologically uninjured. He ordered physical therapy. In December 1992, Dr. P called for a discogram of the L4-L5 area, saying, "I am unable to give any disability until the discogram is done." On January 12, 1993, Dr. P reported the discogram as showing "moderate degeneration of L4 disc," returned claimant to work, cautioned him to avoid stress, and called for a loss of weight; he added that if claimant loses weight, works and still complains, "we may consider a (illegible). He should return to see me as directed." On March 24, 1993, Dr. P said that MMI had not been reached, but does not mention the discogram findings or call for any other tests, but did call for more "rehabilitation" and said, "should return to see me as appointed."

(Dr. W) on August 28, 1992, found that claimant reached MMI on August 28, 1992 with zero percent impairment. (Dr. W refers to an evaluation done on April 10, 1992, so a question arises whether Dr. W in effect was predicting a future date of MMI--no question of this possibility was raised at the hearing or on appeal, so it will not be addressed further.) MRIs were performed on claimant in April 1991 and May 1992. The first MRI indicated a posterior protrusion at L5-S1 and a bulge at L3-L4, L4-L5. The latter MRI reported fat at L3-4, drying of the disc at L3-4, L4-5, and L5-6, with herniation at L3-4. The discogram, dated December 22, 1992, said its findings were consistent with "findings on the MRI study. . .;" it described degeneration of the disc at L4-5 with posterior bulge and no indication of contrast material in the disc space. (Dr. T), a neurosurgeon, who, according to Dr. W, claimant selected, returned claimant to light duty on June 24, 1992. Dr. T's records indicate that he had examined one or more MRIs (both of which predated the last medical record of Dr. T which this record of hearing contains).

A designated doctor, Dr. C, was appointed. He examined claimant on November 13, 1992, and found MMI on that date with zero percent impairment. The hearing officer considered Dr. C's report as raising certain questions, to which he solicited answers from Dr. C. Dr. C replied that he examined the medical records of Dr. T, and "reports of x-rays." He described various parts of his examination of the claimant, took information from the claimant, and discussed the absence of findings that would provide a percentage of impairment. He had previously noted "mild degeneration of the L5-S1 disc," made other comments about claimant's ability with leg raising in his original report, and found MMI had been reached. (Compare Dr. C's observation of "mild degeneration" with claimant's treating doctor (Dr. P's) statement in January 1993, "moderate degeneration of L4 disc.") While Dr. C's determination that MMI had been reached on November 13, 1992, was prior to the discogram, that study indicated that it was consistent with MRI results that preceded his evaluation.

Article 8308-4.25(b) provides that the designated doctor's report as to MMI shall have presumptive weight unless the great weight of other medical evidence is contrary to it. Article 8308-1.03(32) refers to MMI as occurring when lasting improvement or further material recovery is not reasonably anticipated "based on reasonable medical probability." While Dr. P makes the statement in March 1993 that MMI has not been reached, he does not say why at such time, which is over two years since the injury and also after claimant had received physical therapy, he anticipates that rehabilitation will provide further material recovery or lasting improvement.

Claimant stressed, both at hearing and on appeal, that Dr. C did not follow the Guides and spent little time in evaluating claimant. Texas Workers' Compensation Commission Appeal No. 93035, decided February 24, 1993, stated:

> The Guides, however, only address an impairment rating and do not provide standards for determining when MMI has been reached. Whether a

particular doctor should have performed a certain test or not as to impairment does not necessarily affect attainment of MMI.

Similarly, Texas Workers' Compensation Commission Appeal No. 93031, decided February 25, 1993, reviewed the criteria set forth in Articles 8308-4.25 and 4.26 and concluded that the legislature indicated, by the presumption accorded the designated doctor's opinion, that familiarity with claimant's past treatment was not a controlling factor in determining MMI and an impairment rating. The weight to be given medical evidence is not necessarily based on the quantity of evidence admitted or the time spent with a particular doctor.

The great weight of the other medical evidence considered at this hearing was not contrary to the designated doctor's opinion as to MMI. Dr. S had said in 1991 that claimant could return to work. Dr. W indicated that MMI was reached two months earlier than did Dr. C. Dr. P's assertion that MMI has not been reached is not supported by a treatment plan anticipated to provide lasting improvement or further medical recovery.

As to the question of impairment rating, generally this is a fact question for the hearing officer to decide. In this case the hearing officer was satisfied that the impairment rating of Dr. C was based on an evaluation that adequately addressed the provisions of the Guides. Even if Dr. C's explanation did not show adequate compliance with the Guides in reaching his rating, the outcome in this case would not be affected. Article 8308-4.26(g) of the 1989 Act provides that when the great weight of the other medical evidence is to the contrary, the designated doctor's impairment rating is not the basis of the impairment rating "in which case the commission shall adopt the impairment rating of one of the other doctors." The only other impairment rating offered in evidence was that of Dr. W, which was also zero percent. The 1989 Act does not provide that the hearing officer can assign an impairment rating different from that proposed by any doctor.

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge